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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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GODSON ERUCHALU,  
  
Appellant,  
  
v.  
  
US BANK NATIONAL ASSOCIATION et al.,  
  
Appellees.

Case No. 2:15-cv-01799-RFB

**ORDER**

**I. INTRODUCTION**

Before the Court is Appellant Eruchalu’s appeal of a Bankruptcy Court order granting a motion to confirm that the automatic stay was not in effect. The Court finds that it lacks jurisdiction over this appeal and the appeal therefore must be dismissed.

As a preliminary matter, for the good cause stated in the Motion For Leave (ECF No. 22) to supplement the record, the Court grants that Motion and will take judicial notice of the supplement attached to the Motion.

**II. DISCUSSION**

This appeal arises out of the bankruptcy court’s order on August 25, 2015 granting creditor U.S. Bank’s Motion to Confirm Automatic Stay Is Not In Effect. Appellant filed his notice of appeal of the order to be heard by the Bankruptcy Appellate Panel on or around September 9, 2015. Appellee U.S. Bank filed a Statement of Election for Appeal on or around September 11, 2015 to have the appeal heard by the United States District Court for the District of Nevada pursuant to

1 Rule 8005 of the Federal Rules of Bankruptcy Procedure. The bankruptcy court held when  
2 dismissing the adversary complaint that it had jurisdiction over the main bankruptcy case filed in  
3 the United States Bankruptcy Court for the District of Nevada by Appellant, Chapter 13 Case No.  
4 14-11381, pursuant to 28 U.S.C. §1334(a), 157(a) and LR 1001(b)(1). The bankruptcy court held  
5 venue of the main bankruptcy case appropriate under 28 U.S.C. §1408(1).

6 A district has jurisdiction under 28 U.S.C. § 158(a)(1) to hear an appeal from a “final”  
7 order of the bankruptcy court. Leave of court to appeal is required for interlocutory orders. 28  
8 U.S.C. § 158(a)(3).

9 First, the Court lacks jurisdiction over this appeal. 28 U.S.C. §158(a)(3) requires Appellant  
10 to obtain leave of court to appeal interlocutory orders. Appellant appeals an interlocutory order  
11 granting U.S. Bank’s Motion to Confirm No Automatic Stay Is In Effect. Appellant did not follow  
12 the procedure in Rule 8004 of the Federal Rules of Bankruptcy Procedure to apply for leave to  
13 appeal, and has consequently not obtained leave. Therefore, this appeal may be dismissed on this  
14 basis.

15 Second, the Court finds that this appeal must be dismissed as moot. An appeal is moot if  
16 no present controversy exists as to which an appellate court can grant effective relief. W. Coast  
17 Seafood Processors Ass'n v. Natural Res. Def. Council, 643 F.3d 701, 704 (9th Cir. 2011). A  
18 foreclosure sale occurred in this case on April 8, 2016. The underlying merits of the bankruptcy  
19 case and federal case have already been adjudicated regarding this property. In Case No. 2:15-cv-  
20 00946-JCM, the district court affirmed the bankruptcy court’s order dismissing the adversary  
21 proceeding applying to the subject property in this case. There was no successful appeal of this  
22 determination. In Case No. 2:12-cv-1264-RFB-VCF, this Court entered judgment against the  
23 Appellant and denied injunctive relief as to the subject property. No successful appeal was taken  
24 of this determination. The judgments in these cases are now final and Appellant has not been  
25 successful on the merits. He therefore can obtain no relief here of the denial of an interlocutory  
26 order confirming that the automatic stay was in effect. Securities & Exch. Comm'n v. Mount  
27 Vernon Memorial Park, 664 F.2d 1358, 1361 (9th Cir.1982) (holding that appellant’s appeal is  
28 merged with the dismissal of underlying claims).

1           Additionally, the Court denies Appellant's Motion for Disqualification (ECF No. 23). The  
2 Court construes this as a motion pursuant to 28 U.S.C. §§ 144 and 455. Appellant has not asserted  
3 legally sufficient detail in his affidavit and motion to establish any bias on the part of the Court.  
4 Appellant filed his motion untimely. Appellant does not assert an extrajudicial basis for bias by  
5 the Court. Taylor v. Regents of Univ. of California, 993 F.2d 710, 712 (9th Cir. 1993) (holding  
6 that adverse rulings alone are insufficient to demonstrate bias and to compel recusal).


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8           **III. CONCLUSION**

9           IT IS HEREBY ORDERED that the appeal in this case is DISMISSED for the reasons  
10 noted.

11           IT IS FURTHER ORDERED that the Motion [22] for Leave is GRANTED; the Motion  
12 [23] for Disqualification is DENIED; and the Motion [28] to Strike is DENIED.

13           The Clerk of Court is instructed to close this case.

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15           DATED this 21st day of February, 2018.

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19           **RICHARD F. BOULWARE, II**  
20           **UNITED STATES DISTRICT JUDGE**